

UNITED STATES DISTRICT COURT FILED  
DISTRICT OF MASSACHUSETTS CLERK'S OFFICE

CIVIL NO. 04-30124-MAP 2005 JUN 17 A 10: 55

ALEX DELGADO, Petitioner, U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

vs.

KATHLEEN M. DENNEHEY, Respondent.

PETITIONER'S MOTION TO STRIKE  
RESPONDENT'S MOTION FOR RECONSIDERATION


Petitioner moved *ex parte* for funds pursuant to 18 U.S.C. §3006A(e)(1) to assist him in preparing and presenting his fair cross section claims to the Court. In response to a docket entry conditionally approving Petitioner's motion, Respondent has filed a motion for reconsideration. Petitioner moves to strike Respondent's motion for reconsideration on the ground that Respondent lacks standing to intervene in a proceeding under 18 U.S.C. §3006A(e)(1).

The statute requires that applications for expert services be heard *ex parte*. United States v. Abreu, 202 F3d 386, 389 (1<sup>st</sup> Cir. 2000). Such applications are non-adversarial. United States v. Bloomer, 150 F3d 146, 148 (2<sup>nd</sup> Cir. 1998). "Ex parte" means "not all parties are present or given the opportunity to be heard," and "done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested." Black's Law Dictionary 1221 (7<sup>th</sup> ed. 1999); Abreu, 202 F3d at 390 . The statute has been interpreted as virtually guaranteeing that decisions on expert-appointment motions will be made, as that statute requires, 'after an appropriate

inquiry in an ex parte proceeding.” Lawson v. Dixon, 3 F3d 743, 751 (4<sup>th</sup> Cir. 1993) [proceeding under 28 U.S.C. §2254].

Respondent’s Motion For Reconsideration cannot be entertained consistently with the requirements of the statute. Petitioner respectfully requests that it be stricken or, alternatively, denied.

Respectfully submitted,  
ALEX DELGADO, PETITIONER

By   
John M. Thompson  
Federal Bar No. 22530  
Thompson & Thompson, P.C.  
1331 Main Street, Suite 320  
Springfield, MA 01103  
[413] 739-2100  
[413] 739-2300 facsimile

Certificate of Service

The undersigned certifies that a true and accurate copy of the foregoing motion has been served upon Assistant Attorney General Annette Bennedetto, One Ashburton Place, Boston, MA 02108 by first class mail, postage prepaid, this 16<sup>th</sup> day of June, 2005.

  
John M. Thompson